

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In re: § Case No. 23-11007-cgb
§
ARTIUS.ID, INC., § Chapter 7
§
Alleged Debtor. §

**RESPONSE AND OBJECTION OF ALLEGED DEBTOR TO TRUSTEE'S
MOTION TO REOPEN EVIDENCE, AND RESERVATION OF RIGHTS**

(Hearing Scheduled for Monday, October 7, 2024 at 3:00 pm CDT)

Alleged Debtor, Artius.iD, Inc. ("Artius") by and through undersigned counsel and pursuant to Local Rule 7007(b), files this Response and Objection to the *Trustee's Motion to Reopen Evidence* [Doc. No. 133] (the "**Motion to Reopen**") filed by the appointed Chapter 7 Trustee, Ron Satija,¹ and states as follows:

1. The Motion to Reopen appears to have been filed for the purposes of:
 - a. Offering a stale, hearsay Declaration to provide support for the IOActive claim that has now been resolved by Artius, such resolution being contingent on the dismissal of this Chapter 7; and
 - b. Alleging without basis that the extensive testimony offered by Artius at the hearing on September 25, 2024 (the "**September 25 Hearing**") was incomplete, false or otherwise deficient regarding its good faith efforts to identify and include all known creditors as of on and after the November 30, 2023 petition date on the list and matrix of creditors duly filed with the

¹ Artius has advised the Court's calendar clerk and all counsel of record that it does not oppose the *Motion for Expedited Consideration of Trustee's Motion to Reopen Evidence* [Doc. No. 134]. Artius desires that the Motion to Reopen be heard and denied at the hearing of October 7, 2024, so that the Court can dismiss the case as agreed by Artius, the Petitioning Creditors, Collaborative Vision, Skypoint and IOActive – all of the creditors that have filed proofs of claim in this case – hopefully with the consent and support of the Trustee.

Court as Exhibits to the Declaration of Michael Frederick Marcotte on August 9, 2024 [Doc. No. 84] (the “**Marcotte Declaration**”).

Each of these points will be addressed in turn.

The IOActive Claim

2. After hearing several hours of testimony from two witnesses offered by Artius at the September 25 Hearing, the Court expressed the view that the testimony of those witnesses was credible and expressed its inclination to dismiss this case upon the payment or escrow of funds sufficient to pay the claims of creditors Collaborative Vision, LLC, Skypoint Cloud, Inc. and IOActive, Inc. as ultimately settled or adjudicated by a court of competent jurisdiction.²

3. Not content to rest on that record and simply escrow the disputed amounts for Skypoint and IOActive, Artius and its undersigned counsel set about to resolve the claims of those creditors, and will represent to the Court at the final hearing on October 7, 2024 that it has achieved resolutions with both of those creditors who now support the dismissal of this case.³

4. Mr. Satija and his counsel have been advised that Artius has reached these accommodations, and Artius understands that as part of a larger agreement the Trustee will withdraw the Motion to Reopen as moot. Artius is hopeful that the case will proceed steadily toward a consensual dismissal at the October 7 hearing, such that there will be no need nor reason to reopen the evidence for the purpose of introducing a hearsay Declaration and related attachments

² The characterization of the September 25 proceedings is based on a combination of personal recollection and notes of undersigned counsel and a review of the transcript of the September 25 Hearing. Page and line citations to that transcript are omitted here only in the interest of brevity, and can be offered as necessary at the October 7 hearing.

³ As urged by the Court, Artius was prepared to increase the escrow amounts for Skypoint and IOActive to 110% of the amounts set forth in their respective proofs of claim. In light of these agreements that are in the process of final documentation, the agreed amounts will be paid directly to each of Skypoint and IOActive following entry of the Dismissal Order and execution of the requisite documents, rather than included in the escrow arrangement.

that seek to establish the validity of the IOActive claim and the Debtor's knowledge of that claim that now has been resolved with IOActive and its counsel of record.

The Good Faith Efforts to Identify and Provide Notice to Known Creditors

5. The Court heard extensive evidence from both of Artius' witnesses on the extensive efforts undertaken in good faith to identify and include all known creditors on the list and matrix attached to the Marcotte Declaration, and the absence of any intention to omit any known creditors. Mr. Satija's able (proposed) counsel⁴ had ample opportunity to cross-examine both witnesses and took advantage of that opportunity, then offered no witnesses of his own. Insofar as the IOActive claim is concerned, Mr. Marcotte testified only about what he believed were abusive calls from a self-identified representative of the Swisher Group purporting to act on behalf of IOActive, and not to any direct communications that would have alerted him to the IOActive claim. Now that this claim has been resolved directly with IOActive through its counsel of record, it serves no interest to reopen and reexamine that testimony.

6. The Court made clear following these proceedings as described above that evidence was closed, and the Motion to Reopen offers no sound reason to reopen it – certainly no justification that additional evidence would alter the course on which this case appears to be headed.⁵ Based upon the testimony at that hearing and the further agreements described in this Response, the record supports the conclusion that Artius has worked diligently to resolve its contested debts and continues to pay its debts as they become due.

⁴ Undersigned counsel continues to encourage proposed counsel for the Trustee to submit a separate Order approving his Application to retain the Hayward firm.

⁵ In the event the evidence is reopened, Artius reserves the right to object to the Declaration and related exhibits that the Trustee may seek to offer, but in the interests of brevity does not address the evidentiary objections in this Response.

7. For all of the foregoing reasons the Motion to Reopen should be denied, and the Court should proceed to hear final argument on the Dismissal Motion as scheduled at the conclusion of the September 25 Hearing.

WHEREFORE, Alleged Debtor Artius.iD respectfully requests that the Motion to Reopen be denied, whether as moot or for lack of merit, and that the Court proceed without delay to hear and consider the closing arguments in respect of the Dismissal Motion.

Dated: October 6, 2024

Respectfully Submitted,

By: /s/ Mark D. Bloom _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 6, 2024 a true and correct copy of the foregoing was served simultaneously upon docketing on all counsel of record or *pro se* parties identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF or by first class U.S. mail on those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing in this case within one business day of filing.

/s/ Mark D. Bloom

Mark D. Bloom

Electronic Notice by CM/ECF

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See Attached Matrix

Manual Notice

None

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